

Zawitoski, John

From: Criss, Jeremy
Sent: Tuesday, October 21, 2014 12:35 PM
To: Leventhal's Office, Councilmember
Cc: 'David Weitzer'; 'BCISSEL@aol.com'; Zawitoski, John; 'thelecksfarm@aol.com'; Plummer, David C.; 'Lonnie Luther'; Grace Leatherman (mcfarmbureausecretary@gmail.com)
Subject: FW: Revised Draft of Pesticide Legislation
Attachments: Bill 8.doc; AACPesticideLegislation.doc

Hello Council Vice President Leventhal,

I am following up your message below from last Thursday October 16, 2014, regarding the Pesticide Legislation you have been preparing to introduce.

Please understand the agricultural organizations listed below have all reviewed and discussed the previous document titled Discussion Draft-Possible Pesticide Legislation.

Agricultural Advisory Committee-David Weitzer Chairman-Jeremy Criss Staff
Agricultural Preservation Advisory Board-Bob Cissel Chairman-John Zawitoski Staff
Montgomery Soil Conservation District-George Lechlinder Chairman- David Plummer Staff
Montgomery County Farm Bureau-Lonnie Luther President-Grace Leatherman Staff

The agricultural organizations listed above have not yet reviewed the first attached document Titled Bill 8 doc which contains many revisions from the previous Discussion Draft.

Also attached you will find the position of the Agricultural Advisory Committee based on their meetings in May, July, and September where they discussed the Discussion Draft.

Please let us know if you have any questions.

Thanks J

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From: Leventhal's Office, Councilmember
Sent: Thursday, October 16, 2014 5:12 PM
Subject: Revised Draft of Pesticide Legislation

Dear Friends,

As you know, over the last year, I have been working to educate myself on the topic of pesticides in preparation to introduce legislation affecting their use. I wanted to take this opportunity to summarize what has been done up to this point, and to update you on the status of my pending legislation.

In September 2013, the T&E committee received a briefing from our Department of General Services, the Department of Parks, Montgomery County Public Schools and our Department of Environmental Protection on current agency practices as they pertain to pesticide use on county property and enforcement of county pesticide laws. We also heard from neighboring jurisdictions that have enacted their own restrictions on pesticides that may pose a health risk and are deemed non-essential for protecting public health or property.

In May of this year, I circulated draft legislation that would generally amend County law affecting the application of these non-essential pesticides within the county, and subsequently solicited the feedback of colleagues and stakeholders. The feedback I received was universally negative. I have spent the intervening period revising the draft to respond to the concerns that were expressed by stakeholders on both sides of the issue. I now have a draft of the legislation that is ready for introduction and I wanted to share it with you before I do so.

What follows is a summary of the key provisions of the bill:

- 1) Require the posting of notice when a property owner applies a pesticide to an area of lawn more than 100 square feet, consistent with the notice requirements for when a landscaping business treats a lawn with a pesticides;
- 2) Require the Executive to designate a list of "non-essential" pesticides including:
 - all pesticides classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. EPA;
 - all pesticides classified by the U.S. EPA as "Restricted Use Products;"
 - all pesticides classified as "Class 9" pesticides by the Ontario, Canada, Ministry of the Environment; and
 - all pesticides classified as "Category 1 Endocrine Disruptors" by the European Commission
- 3) Generally prohibit the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses;
- 4) Require the Executive to conduct a public outreach and education campaign before and during the implementation of the Bill;
- 5) Generally prohibit the application of non-essential pesticides to County-owned property; and
- 6) Require the County to adopt an Integrated Pest Management program.

I intend to introduce this legislation on Tuesday, October 28. If there are issues with the legislation that you feel need to be addressed before its introduction, I would ask that you provide me with your comments on the attached draft by Tuesday, October 21; however, your feedback would be equally welcome any time after the bill has been introduced.

While the bill will be introduced before the end of the month, a public hearing and committee meetings on the bill will not be scheduled until 2015.

If you have any questions or concerns, please feel free to let me know.

Best regards,
George Leventhal
Vice President, Montgomery County Council

Bill No. xx-14
Concerning: Pesticides – Notice
Requirements – Non-essential
Pesticides – Prohibitions
Revised: October 16, 2014
Draft No. 8
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice President Leventhal

AN ACT to:

- (1) require posting of notice for certain lawn applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on certain County-owned property
- (4) require the County to adopt an integrated pest management program for certain County-owned property; and
- (5) generally amend County law regarding pesticides.

By amending

Montgomery County Code
Chapter 33B, Pesticides
Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6, and 33B-7

By adding

Montgomery County Code
Chapter 33B, Pesticides
Articles 2, 3, 4, and 5
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, and 33B-13

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

27 (4) uses non-chemical pest-control methods and the careful use of
 28 least-toxic chemical methods when non-chemical methods have
 29 been exhausted or are not feasible.

30 Larvicide means a pesticide designed to kill larval pests.

31 *Lawn* means an area of land, except agricultural land, that is:

32 (1) [Mostly] mostly covered by grass, other similar herbaceous
 33 plants, shrubs, or trees; and

34 (2) [Kept] kept trim by mowing or cutting.

35 Lawn includes an athletic playing field other than a golf course. Lawn does
 36 not include a garden.

37 Non-essential pesticide means a pesticide designated as a non-essential
 38 pesticide under Section 33B-4.

39 *Pest* means an insect, snail, slug, rodent, nematode, fungus, weed, or other
 40 form of plant or animal life or microorganism (except a microorganism on or
 41 in a living human or animal) that is normally considered to be a pest or defined
 42 as a pest by applicable state regulations.

43 *Pesticide* means a substance or mixture of substances intended or used to:

44 (1) prevent, destroy, repel, or mitigate any pest;

45 (2) be used as a plant regulator, defoliant, or desiccant; or

46 (3) be used as a spray adjuvant, such as a wetting agent or adhesive.

47 However, *pesticide* does not include an antimicrobial agent, such as a
 48 disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a
 49 pesticide under any federal or state law or regulation.

50 Private lawn application means the application of a pesticide to a lawn on
 51 property owned by or leased to the person applying the pesticide. Private
 52 lawn application does not include:

53 (1) applying a pesticide for the purpose of engaging in agriculture;

- 81 (1) all pesticides classified as “Carcinogenic to Humans” or “Likely
- 82 to Be Carcinogenic to Humans” by the U.S. Environmental
- 83 Protection Agency;
- 84 (2) all pesticides classified by the U.S. Environmental Protection
- 85 Agency as a “Restricted Use Product”;
- 86 (3) all pesticides classified as a “Class 9” pesticide by the Ontario,
- 87 Canada, Ministry of the Environment;
- 88 (4) all pesticides classified as a “Category 1 Endocrine Disruptor” by
- 89 the European Commission; and
- 90 (5) any other pesticides which the Executive determines are not
- 91 critical to pest management in the County.

92 (d) The Executive must include in the regulations adopted under this

93 Section a list of invasive species that may be detrimental to the

94 environment in the County.

95 (e) The Executive must review and update the lists of non-essential

96 pesticides and invasive species designated under subsections (c) and (d)

97 by July 1 of each year.

98 **[33B-7] 33B-5. Penalty for violating chapter.**

- 99 (a) Any violation of this Chapter is a class C violation.
- 100 (b) Each day a violation continues is a separate offense.

101 **ARTICLE 2. Notice Requirements.**

102 **[33B-2] 33B-6. Notice about pesticides to customer.**

- 103 (a) In this [section] Section:
- 104 (1) Customer means a person who makes a contract with a custom
- 105 applicator to have the custom applicator apply a pesticide to a
- 106 lawn.

- 107 (2) New customer includes a customer who renews a contract with a
 108 custom applicator.
- 109 (b) A custom applicator must give to a new customer:
- 110 (1) [Before] before application, a list of:
- 111 [a.](A) [The] the trade name of each pesticide that might be
 112 used;
- 113 [b.](B) [The] the generic name of each pesticide that might
 114 be used; and
- 115 [c.](C) [Specific] specific customer safety precautions for
 116 each pesticide that might be used; and
- 117 (2) [After] after application, a list of:
- 118 [a.](A) [The] the trade name of each pesticide actually used;
 119 and
- 120 [b.](B) [The] the generic name of each pesticide actually
 121 used; and
- 122 (3) [A] a written notice about pesticides prepared by the [department]
 123 Department under subsection (c) [of this section].
- 124 (c) The [department] Department must prepare, keep current, and provide
 125 to a custom applicator a written notice about pesticides for the custom
 126 applicator to give to a customer under subsection (b) [of this section].
- 127 (d) The notice prepared by the [department] Department under subsection
 128 (c) [of this section] must include:
- 129 (1) [Government] government agency phone numbers to call to:
- 130 [a.](A) [Make] make a consumer complaint;
- 131 [b.](B) [Receive] receive technical information on
 132 pesticides; and

- 133 [c.] (C) [Get] get assistance in the case of a medical
 134 emergency;
- 135 (2) [A] a list of general safety precautions a customer should take
 136 when a lawn is treated with a pesticide;
- 137 (3) [A] a statement that a custom applicator must:
 138 [a.](A) [Be] be licensed by the Maryland Department of
 139 Agriculture; and
 140 [b.](B) [Follow] follow safety precautions; and
- 141 (4) [A] a statement that the customer has the right to require the
 142 custom applicator to notify the customer before each treatment of
 143 the lawn of the customer with a pesticide.

144 **[33B-3] 33B-7. Posting signs after application by custom applicator.**

- 145 (a) Immediately after a custom applicator treats a lawn with a pesticide, the
 146 custom applicator must [post a sign on the lawn] place markers within
 147 or along the perimeter of the area where pesticides will be applied.
- 148 (b) A [sign posted] marker required under this [section] Section must:
 149 (1) [Be] be clearly visible [from the principal place of access to] to
 150 persons immediately outside the perimeter of the property;
 151 (2) [Be] be a size, form, and color approved by the [department]
 152 Department;
 153 (3) [Be] be made of material approved by the [department]
 154 Department; [and]
 155 (4) [Have] have wording with content and dimensions approved by
 156 the [department] Department[.]; and
 157 (5) be in place on the day that the pesticide is applied.

158 **33B-8. Posting signs after application by property owner or tenant.**

- 159 (a) A person who performs a private lawn application treating an area
 160 more than 100 square feet must place markers within or along the
 161 perimeter of the area where pesticides will be applied.
- 162 (b) A marker required under this Section must:
- 163 (1) be clearly visible to persons immediately outside the perimeter of
 164 the property;
- 165 (2) be a size, form, and color approved by the Department;
- 166 (3) be made of material approved by the Department; and
- 167 (4) have wording with content and dimensions approved by the
 168 Department; and
- 169 (5) be in place on the day that the pesticide is applied.

170 **ARTICLE 3. Application restrictions.**

171 **33B-9. Prohibited application.**

172 A person must not apply a non-essential pesticide to a lawn.

173 **33B-10. Exceptions and Exemptions.**

- 174 (a) A person may apply a non-essential pesticide for the following
 175 purposes:
- 176 (1) for the control of weeds as defined in Chapter 58, Weeds;
- 177 (2) for the control of invasive species listed in a regulation adopted
 178 under Subsection 33B-4(d);
- 179 (3) for pest control while engaged in agriculture; and
- 180 (4) for the maintenance of a golf course.
- 181 (b) A person may apply to the Director for an exemption from the
 182 prohibition of Section 33B-9 for a non-essential pesticide. The Director
 183 may grant an exemption to apply a non-essential pesticide on property
 184 where application is prohibited under Section 33B-9 if the applicant
 185 shows that:

- 186 (1) effective alternatives are unavailable;
 187 (2) granting an exemption will not violate State or federal law; and
 188 (3) use of the non-essential pesticide is necessary to protect human
 189 health or prevent significant economic damage.
- 190 (d) A person may apply to the Director for an emergency exemption from
 191 the prohibition in Section 33B-9 if a pest outbreak poses an imminent
 192 threat to public health or if significant economic damage would result
 193 from the inability to use a pesticide prohibited by Section 33B-9. The
 194 Director may impose specific conditions for the granting of emergency
 195 exemptions.

196 **33B-11. Outreach and Education Campaign.**

197 The Executive must implement a public outreach and education campaign
 198 before and during implementation of the provisions of this Article. This campaign
 199 should include:

- 200 (a) informational mailers to County households;
 201 (b) distribution of information through County internet and web-based
 202 resources;
 203 (c) radio and television public service announcements;
 204 (d) news releases and news events;
 205 (e) information translated into Spanish, French, Chinese, Korean,
 206 Vietnamese, and other languages, as needed;
 207 (f) extensive use of County Cable Montgomery and other Public,
 208 Educational, and Government channels funded by the County; and
 209 (g) posters and brochures made available at County events, on Ride-On
 210 buses and through Regional Service Centers, libraries, recreation
 211 facilities, senior centers, public schools, Montgomery College, health
 212 care providers, hospitals, clinics, and other venues.

213 **ARTICLE 4. County Property**

214 **33B-12. Prohibition on County-owned property.**

215 (a) *Prohibition.* Except as provided in subsection (b), a person must not
216 apply a non-essential pesticide to any property owned by the County.

217 (b) *Exceptions.*

218 (1) A person may use a larvicide or rodenticide on property owned
219 by the County as a public health measure to reduce the spread of
220 disease vectors under recommendations and guidance provided
221 by the Centers for Disease Control and Prevention, the United
222 States Environmental Protection Agency, or the State Department
223 of Agriculture. Any rodenticide used must be in a tamper-proof
224 product, unless the rodenticide is designed and registered for a
225 specific environment inaccessible to humans and pets.

226 (2) A person may use a non-essential pesticide for the purposes set
227 forth in Subsection 33B-10(a).

228 (3) A person may use a non-essential pesticide on property owned by
229 the County if the Director determines, after consulting the
230 Directors of General Services and Health and Human Services,
231 that the use of pesticide is necessary to protect human health or
232 prevent imminent and significant economic damage, and that no
233 reasonable alternative is available. If a pesticide is used under
234 this paragraph, the Director must, within 30 days after using the
235 pesticide, report to the Council on the reasons for the use of the
236 pesticide.

237 **33B-13. Integrated pest management.**

238 (a) Adoption of program. The Department must adopt, by a method (2)
239 regulation, an integrated pest management program for property owned
240 by the County.

241 (b) Requirements. Any program adopted under subsection (a) must require:

242 (1) monitoring the turf or landscape;

243 (2) accurate record-keeping documenting any potential pest problem;

244 (3) evaluating the site for any injury caused by a pest and
245 determining the appropriate treatment;

246 (4) using a treatment that is the least damaging to the general
247 environment and best preserves the natural ecosystem;

248 (5) using a treatment that will be the most likely to produce long-
249 term reductions in pest control requirements and is operationally
250 feasible and cost effective in the short and long term;

251 (6) using a treatment that minimizes negative impacts to non-target
252 organisms;

253 (7) using a treatment that is the least disruptive of natural controls;

254 (8) using a treatment that is the least hazardous to human health; and

255 (9) exhausting the list of all non-chemical and organic treatments
256 available for the targeted pest before using any synthetic
257 chemical treatments.

258 (c) The Department must provide training in integrated pest management
259 for each employee who is responsible for pest management.

260 **Sec. 2. Initial Lists of Non-Essential Pesticides and Invasive Species.** The
261 Executive must submit the lists of non-essential pesticides and invasive species
262 required by Subsections 33B-4(c) and (d) to the Council for approval by October 1,
263 2015.



AGRICULTURAL ADVISORY COMMITTEE

October 21, 2014

The Honorable George Leventhal
Vice Pres. Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council Vice President Leventhal: Re- Pesticide Legislation

The Montgomery County Agricultural Advisory Committee-AAC met on May 20, 2014, July 15, 2014, and September 16, 2014 to discuss the Pesticide Legislation. The approved minutes from these meetings are posted to the DED-Agricultural Services web site below under Archived 2014 meetings agendas and minutes and we encourage you to see the full discussion.

<http://www.montgomerycountymd.gov/AgServices/agboardscommittee.html>

Thank you for providing the AAC an opportunity to review this Discussion Draft and for your staff representative Chris Gillis attending our meetings. The AAC devoted these meetings to thoroughly discuss this possible pesticide legislation and we also invited the Agricultural Preservation Advisory Board members to attend our July 15, 2014 meeting.

The AAC understands there is an exemption for agricultural operations contained in the legislation; however, the AAC cannot support this legislation because we strongly oppose any legislation that limits the proper use of pesticides in Montgomery County. We feel this legislation is totally unnecessary because pesticides are closely and carefully regulated at the State and Federal levels. The AAC believes that farmers should not support legislation which exempts agricultural operations and create perception that farmers are pointing fingers at other users as being the source of the problem for using pesticides. The AAC further believes that more education and less regulation are needed in the County for Pesticide usage.

The AAC would like to thank you again for the opportunity to present our views on the Discussion Draft-Possible Pesticide Legislation and please let us know if you have any questions.

Sincerely,

David Weitzer, Chairman